

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SPHERE 3D CORP.,

Plaintiff and Counter-Defendant,

v.

GRYPHON DIGITAL MINING, INC.,

Defendant and Counter-Plaintiff.

Case No. 1:23-cv-02954-PKC

DECLARATION OF KURT KALBFLEISCH

I, Kurt Kalbfleisch, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following facts are true and correct based on my personal knowledge:

1. I am Sphere's Chief Financial Officer. I make this declaration in support of Sphere's letter opposing Gryphon Digital Mining, Inc.'s March 25, 2024 pre-motion letter requesting leave to file a motion seeking an attachment.

2. On or around March 26, 2024, Sphere became registered to do business in the State of New York. A true and correct copy of the Application for Authority is attached hereto as **Exhibit 1**.

3. A true and correct copy of relevant excerpts of Sphere's 2023 Form 10-K filed with the Securities & Exchange Commission (the "SEC") is attached hereto as **Exhibit 2**.

4. A true and correct copy of relevant excerpts of Sphere's 2022 Form 10-K filed with the SEC is attached hereto as **Exhibit 3**.

5. A true and correct copy of relevant excerpts of Sphere's 2021 Form 20-F filed with the SEC is attached hereto as **Exhibit 4**.

6. A true and correct copy of relevant excerpts of Sphere's 2020 Form 20-F filed with the SEC is attached hereto as **Exhibit 5**.

7. Sphere does not presently intend, and has not taken steps, to file for bankruptcy or similar protection. Instead, Sphere is presently actively exploring accretive transactions.

8. Sphere is presently holding the Core Equity Proceeds as an investment asset in the hope that Core's shares will rise in value. It plans to sell a limited number of shares in the event that Core stock reaches a target price. Sphere intends to use cash derived from the Core Equity Proceeds for business purposes, such as acquiring revenue generating assets.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 29, 2024

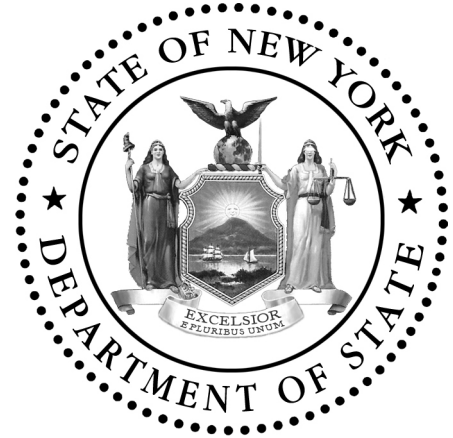

Kurt Kalbfleisch

Exhibit 1

NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF CORPORATIONS, STATE RECORDS AND UNIFORM COMMERCIAL CODE
FILING RECEIPT

ENTITY NAME : SPHERE 3D CORP.
DOCUMENT TYPE : APPLICATION OF AUTHORITY
ENTITY TYPE : FOREIGN BUSINESS CORPORATION

DOS ID : 7289690
FILE DATE : 03/26/2024
FILE NUMBER : 240326002801
TRANSACTION NUMBER : 202403260002807-3080914
EXISTENCE DATE : 03/26/2024
DURATION/DISSOLUTION : PERPETUAL
COUNTY : NEW YORK



SERVICE OF PROCESS ADDRESS : SPHERE 3D INC.
 243 TRESSER BLVD., 17TH FLOOR
 STAMFORD, CT, 06901, USA

ELECTRONIC SERVICE OF PROCESS
EMAIL ADDRESS : N/A

FILER : TOMA BROWN
 C/O PRYOR CASHMAN LLP, 7 TIMES SQUARE
 NEW YORK, NY, 10036, USA

SERVICE COMPANY : DELANEY CORPORATE SERVICES, LTD.
SERVICE COMPANY ACCOUNT : 30

You may verify this document online at : <http://ecorp.dos.ny.gov>
AUTHENTICATION NUMBER : 100005436825

TOTAL FEES:	\$385.00	TOTAL PAYMENTS RECEIVED:	\$385.00
FILING FEE:	\$225.00	CASH:	\$0.00
CERTIFICATE OF STATUS:	\$0.00	CHECK/MONEY ORDER:	\$0.00
CERTIFIED COPY:	\$10.00	CREDIT CARD:	\$0.00
COPY REQUEST:	\$0.00	DRAWDOWN ACCOUNT:	\$385.00
EXPEDITED HANDLING:	\$150.00	REFUND DUE:	\$0.00

STATE OF NEW YORK DEPARTMENT OF STATE

I hereby certify that the annexed copy for SPHERE 3D CORP., File Number 240326002801 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on March 26, 2024.

A handwritten signature in black ink that reads 'Brendan C. Hughes'.

Brendan C. Hughes
Executive Deputy Secretary of State



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

**APPLICATION FOR AUTHORITY
OF**

SPHERE 3D CORP.

(Insert Corporate Name)

Under Section 1304 of the Business Corporation Law

FIRST: The name of the corporation is:

SPHERE 3D CORP.

If the name does not contain a required word or abbreviation indicating corporate character pursuant to § 301 of the Business Corporation Law, the corporation agrees to add the word or abbreviation _____ to the end of its name for use in this state.

(Do not complete the following section unless the corporation's true name is not available pursuant to §301 or § 302 of the Business Corporation Law.) The fictitious name under which the corporation will do business in New York is:

_____.

SECOND: The jurisdiction in which the corporation was organized is:

ONTARIO, CANADA. The date of its incorporation is: MARCH 24, 2015.

THIRD: This corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

FOURTH: The county within this state in which the office of the corporation is to be located is: NEW YORK COUNTY. *(A county in New York State is required. Please note that the corporation is not required to have an actual physical office in this state.)*

FIFTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:

SPHERE 3D INC.
243 TRESSER BLVD., 17TH FLOOR
STAMFORD, CT 06901

SIXTH: *(Check the statement that applies.)*

- ☒ The foreign corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered, engaged in any activity in this state.
- ☐ The consent of the New York State Tax Commission is attached.

X /s/ Kurt L. Kalbfleisch
(Signature)

KURT L. KALBFLEISCH
(Name of Signer)

CHIEF FINANCIAL OFFICER
(Title of Signer)

Transaction Number / Numéro de transaction: APP-A10422716543
Generated on: March 25, 2024, 16:06 / Généré le: 25 mars 2024, 16:06



Ministry of Public and
Business Service Delivery
Ministère des Services au public et
aux entreprises

Certificate of Status

Business Corporations Act

This is to certify that

Attestation du statut juridique

Loi sur les sociétés par actions

La présente vise à attester que

SPHERE 3D CORP.

Corporation Name / Dénomination sociale

1933033

Ontario Corporation Number / Numéro de société de l'Ontario

is a corporation incorporated, amalgamated or continued
under the laws of the Province of Ontario according to the
electronic records maintained by the Ministry of Public and
Business Service Delivery.

est, selon les dossiers électroniques du dossier du ministère
des Services au public et aux entreprises, une société
constituée, issue d'une fusion ou qui continue d'être
exploitée en vertu des lois de la province de l'Ontario.

The corporation came into existence on March 24, 2015
and has not been dissolved.

La société a vu le jour le 24 mars 2015
et n'a pas été dissoute.

V. Quintanilla W.

Director / Directeur

Business Corporations Act / Loi sur les sociétés par actions

Certified a true copy of the record of the
Ministry of Public and Business Service Delivery.

V. Quintanilla W.
Director/Registrar



Copie certifiée conforme du dossier du
ministère des Services au public et aux
entreprises.

V. Quintanilla W.
Directeur ou registrateur

APPLICATION FOR AUTHORITY OF

SPHERE 3D CORP.

(Insert Corporate Name)

Under Section 1304 of the Business Corporation Law

Filer's Name and Mailing Address:

Toma Brown

Name

c/o Pryor Cashman LLP

Company, if Applicable

7 Times Square

Mailing Address

New York, NY 10036

City, State and Zip Code

NOTES:

1. You must submit a Certificate of Existence, Certificate of Good Standing or Certificate of Status from the official who files and maintains incorporation records in the jurisdiction of the corporation's formation.
2. The name of the corporation and date of incorporation must exactly match the name of the corporation and, if applicable, the date of incorporation stated in the Certificate of Existence Certificate of Good Standing or Certificate of Status.
3. The Application for Authority must be signed by an officer, director or duly authorized person.
4. Attach the consent of the NYS Tax Commission, if required. To request consent, call the NYS Department of Taxation and Finance at (518) 485-2639.
5. The Application for Authority must be submitted with a **\$225** filing fee, made payable to the Department of State.
6. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. the Department of State recommends that legal documents be prepared under the guidance of an attorney.

(For Office Use Only)

Exhibit 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2023**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada

(Jurisdiction of incorporation or organization)

98-1220792

(IRS Employer Identification No.)

243 Tresser Blvd, 17th Floor

Stamford, CT 06901

(Address of principal executive offices)

(647) 952-5049

(Registrant's telephone, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Trading Symbol(s)

Name of Each Exchange on Which Registered

Common Shares

ANY

NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Liquidity and Capital Resources

We have recurring losses from operations. Our primary source of cash flow is generated from digital mining revenue and service revenue through December 28, 2023. In addition, we have financed our operations through proceeds from the issuance of private and public sales of securities. At December 31, 2023, we had cash and cash equivalents of \$0.6 million compared to \$1.3 million at December 31, 2022. As of December 31, 2023, we had working capital of \$8.2 million, reflecting an increase in current assets of \$3.2 million and a decrease in current liabilities of \$0.9 million compared to December 31, 2022. The increase in current assets was primarily related to a \$10.0 million recovery of a deposit for prepaid hosting services, primarily offset by decreases of \$3.8 million for notes receivable, \$1.7 million for cash, restricted cash, and digital asset related balances, and \$1.1 million for prepaid services and other. The decrease in current liabilities was primarily related to a decrease in accounts payable and accrued liabilities. Cash management continues to be a top priority. We expect to incur negative operating cash flows as we work to increase our digital mining revenue and maintain operational efficiencies.

In August 2023, we entered into a Securities Purchase Agreement (the “Purchase Agreement”) pursuant to which we issued to two investors a total of 13,764 of our Series H Preferred Shares and a total of 1,966,293 common share purchase warrants (the “Warrants”), each of which entitled the holder to purchase one of our common shares (the “Warrant Shares”). Pursuant to the terms of the Purchase Agreement, we received gross proceeds of \$3.0 million. We issued a total of 1,377 Series H Preferred Shares and 196,629 warrants as a finder’s fee for the transaction with an aggregate fair value of \$0.5 million. Pursuant to the terms of the Purchase Agreement, we will reserve for issuance the maximum aggregate number of common shares that are issuable upon exercise in full of the Warrants at any time.

The Warrants issued in connection with the Purchase Agreement are exercisable beginning February 23, 2024 at an initial exercise price of \$2.75 per share and have a term of three years from the date of issuance. The exercise price of the Warrants are subject to adjustment for certain stock splits, stock combinations and dilutive share issuances.

Management has projected that based on our hashing rate at December 31, 2023, cash on hand may not be sufficient to allow the Company to continue operations and there is substantial doubt about the Company’s ability to continue as a going concern within 12 months from the date of issuance of the financial statements if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds for working capital through equity or debt financings or other sources may depend on the financial success of our then current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital at a reasonable cost and at the required times, or at all, we may not be able to continue our business operations in the cryptocurrency mining industry or we may be unable to advance our growth initiatives, either of which could adversely impact our business, financial condition and results of operations.

Significant changes from our current forecasts, including but not limited to: (i) shortfalls from projected mining earning levels; (ii) increases in operating costs; (iii) fluctuations in the value of cryptocurrency; and (iv) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on our ability to access the level of funding necessary to continue our operations at current levels. If any of these events occurs or we are unable to generate sufficient cash from operations or financing sources, we may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

These factors, among others, indicate there is substantial doubt about our ability to continue as a going concern within 12 months from the date of issuance of the financial statements. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business and do not include any adjustments that might result from the outcome of this uncertainty.

Sphere 3D Corp.
Consolidated Balance Sheets
(in thousands of U.S. dollars, except shares)

	December 31, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 586	\$ 1,337
Digital assets	986	1,695
Restricted cash	—	206
Accounts receivable, net	—	174
Notes receivable, net of allowance for credit losses of \$3,821 and \$0, respectively	—	3,821
Other current assets	11,938	3,051
Total current assets	13,510	10,284
Property and equipment, net	24,166	34,259
Intangible assets, net	4,581	9,477
Funds held in trust account	—	10,297
Other non-current assets	3,406	18,699
Total assets	\$ 45,663	\$ 83,016
Liabilities, Temporary Equity and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 2,374	\$ 2,993
Accrued liabilities	1,179	1,537
Accrued payroll and employee compensation	1,482	696
Warrant liabilities	205	—
Other current liabilities	106	974
Total current liabilities	5,346	6,200
Deferred underwriting fee	—	4,554
Warrant liabilities	—	864
Other non-current liabilities	—	366
Total liabilities	5,346	11,984
Commitments and contingencies (Note 15)		
Series H preferred shares, no par value, unlimited shares authorized, 43,515 and 60,000 shares issued and outstanding at December 31, 2023 and 2022, respectively	13,794	26,469
Redeemable non-controlling interest	—	9,998
Total temporary equity	13,794	36,467
Shareholders' equity:		
Common shares, no par value; unlimited shares authorized, 15,373,616 and 9,804,609 shares issued and outstanding as of December 31, 2023 and 2022, respectively	475,702	456,402
Accumulated other comprehensive loss	(1,808)	(1,799)
Accumulated deficit	(447,371)	(419,732)
Total Sphere 3D Corp. shareholders' equity	26,523	34,871
Non-controlling interest	—	(306)
Total shareholders' equity	26,523	34,565
Total liabilities, temporary equity, and shareholders' equity	\$ 45,663	\$ 83,016

See accompanying notes to consolidated financial statements.

Exhibit 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2022**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada

(Jurisdiction of incorporation or organization)

98-1220792

(IRS Employer Identification No.)

4 Greenwich Office Park, 1st Floor

Greenwich, Connecticut 06831

(Address of principal executive offices)

(647) 952-5049

(Registrant's telephone, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Trading Symbol(s)

Name of Each Exchange on Which Registered

Common Shares

ANY

NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

- the use of a SPAC as an investment tool has recently become more widespread, and there remains substantial uncertainty regarding the viability of SPAC investing on a large scale, the supply of desirable transactions relative to the pace at which SPACs are currently being formed, potential litigation risks associated with transactions executed by a SPAC and whether regulatory, tax or other authorities will implement additional or adverse policies relating to, or initiate enforcement actions targeting, a SPAC and SPAC investing; and
- we expect regulatory scrutiny of and enforcement activities directed toward SPACs and other blank check companies to increase. Any losses relating to these developments could have a material adverse effect on our results of operations, financial condition and cash flow, as well as our reputation.

If the SPAC that we sponsor does not complete an initial business combination, our entire investment may be lost (other than with respect to public shares we may acquire in the SPAC).

As part of our sponsorship of a SPAC, we purchased certain private placement warrants and founder shares of such SPAC at the closing of the SPAC's initial public offering. The private placement warrants and the founder shares, and any additional securities we purchase in the SPAC, will be worthless if the SPAC does not complete an initial business combination. The personal and financial interests of our officers and directors may influence their motivation in identifying and selecting a target business combination, completing an initial business combination and influencing the operation of the business following the initial business combination. In addition, we have made working capital and extension loans directly to the SPAC, which are unlikely to be repaid if the SPAC does not complete an initial business combination. While our SPAC has identified a target and has entered into definitive agreements as such, there is no guarantee that it will close.

Our cash and other sources of liquidity may not be sufficient to fund our operations beyond the next 12 months. We may not be successful in raising additional capital necessary to meet expected increases in working capital needs. If we raise additional funding through sales of equity or equity-based securities, your shares will be diluted. If we need additional funding for operations and we are unable to raise it, we may be forced to liquidate assets and/or curtail or cease operations or seek bankruptcy protection or be subject to an involuntary bankruptcy petition.

Management has projected that cash on hand may not be sufficient to allow us to continue operations beyond the next 12 months based on our hashing rate at December 31, 2022, if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds for working capital through equity or debt financings or other sources may depend on the financial success of our then current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at a reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations in the cryptocurrency mining industry or we may be unable to advance our growth initiatives, either of which could adversely impact our business, financial condition and results of operations.

Significant changes from our current forecasts, including but not limited to: (i) shortfalls from projected sales levels; (ii) fluctuations in the value of cryptocurrency; (iii) unexpected increases in product costs; (iv) increases in operating costs; and (v) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on our ability to access the level of funding necessary to continue our operations at current levels. If any of these events occurs or we are unable to generate sufficient cash from operations or financing sources, we may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Exhibit 4

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 20-F

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2021**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report

For the transition period from _____ to _____

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada

(Jurisdiction of incorporation or organization)

895 Don Mills Road, Bldg. 2, Suite 900

Toronto, Ontario, Canada, M3C 1W3

(Address of principal executive offices)

Peter Tassiopoulos

(858) 571-5555

Peter.Tassiopoulos@sphere3d.com

895 Don Mills Road Bldg. 2, Suite 900, Toronto, Ontario, Canada, M3C 1W3

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Shares	ANY	NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common shares as of the close of the period covered by the annual report: 63,566,403 common shares as of December 31, 2021.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Sphere 3D Corp.
Notes to Consolidated Financial Statements

1. Organization and Business

Sphere 3D Corp. was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to “Sphere 3D Corp.” Any reference to the “Company”, “Sphere 3D”, “we”, “our”, “us”, or similar terms refers to Sphere 3D Corp. and its subsidiaries. The Company delivers data management and desktop and application virtualization solutions through hybrid cloud, cloud and on premise implementations by its global reseller network. The Company achieves this through a combination of containerized applications, virtual desktops, virtual storage and physical hyper-converged platforms. The Company’s products allow organizations to deploy a combination of public, private or hybrid cloud strategies while backing them up with the latest storage solutions. The Company’s brands include HVE ConneXions (“HVE”) and Unified ConneXions (“UCX”). In October 2021, the Company entered into a definitive agreement and sold its SnapServer® product line and associated assets.

The Company has commenced planning and has entered into a series of agreements that will enable it to enter the cryptocurrency space, including entering into the Hertford Agreement with Hertford Advisors Ltd., the Master Services Agreement between Sphere 3D and Gryphon Digital Mining, Inc. (“Gryphon”), the Sub-License and Delegation Agreement with Gryphon, and the NuMiner Agreement with NuMiner Global, Inc. (“NuMiner”). See *Intangible Assets and Goodwill* and *Commitments and Contingencies* in the Notes to the Consolidated Financial Statements for additional information.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond November 30, 2022 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds for working capital or to pay for the purchase of cryptocurrency mining machines through equity or debt financings or other sources may depend on the financial success of our then current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at a reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. We require additional capital and if we are unsuccessful in raising that capital, we may be required to cancel our existing purchase obligations under our current mining purchase agreements, or we may not be able to continue our business operations in the cryptocurrency mining industry or we may be unable to advance our growth initiatives, either of which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company’s current forecasts, including but not limited to: (i) shortfalls from projected sales levels; (ii) unexpected increases in product costs; (iii) increases in operating costs; (iv) changes in the historical timing of collecting accounts receivable; and (v) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company’s ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company’s business, results of operations, financial position and liquidity.

Exhibit 5

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 20-F

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934
OR

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2020**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report

For the transition period from _____ to _____

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada

(State or other jurisdiction of incorporation or organization)

895 Don Mills Road, Bldg. 2, Suite 900

Toronto, Ontario, Canada, M3C 1W3

(Address of principal executive offices)

Peter Tassiopoulos

(858) 571-5555

Peter.Tassiopoulos@sphere3d.com

895 Don Mills Road Bldg. 2, Suite 900, Toronto, Ontario, Canada, M3C 1W3

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Shares	ANY	NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common shares as of the close of the period covered by the annual report: 7,867,186 common shares as of December 31, 2020.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Sphere 3D Corp.
Notes to Consolidated Financial Statements

1. Organization and Business

Sphere 3D Corp. (the “Company”) was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to “Sphere 3D Corp.” The Company delivers data management and desktop and application virtualization solutions through hybrid cloud, cloud and on premise implementations by its global reseller network. The Company achieves this through a combination of containerized applications, virtual desktops, virtual storage and physical hyper-converged platforms. The Company’s products allow organizations to deploy a combination of public, private or hybrid cloud strategies while backing them up with the latest storage solutions. The Company has a portfolio of brands including SnapServer®, HVE ConneXions (“HVE”) and UCX ConneXions (“UCX”).

Management has projected that cash on hand may not be sufficient to allow the Company to continue operations beyond June 30, 2021 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company’s current forecasts, including but not limited to: (i) failure to comply with the terms and financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company’s ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of which would have a material adverse effect on the Company’s business, results of operations, financial position and liquidity.

The Company incurred losses from operations and negative cash flows from operating activities for the 12 months ended December 31, 2020, and such losses might continue for a period of time. Based upon the Company’s current expectations and projections for the next year, the Company believes that it may not have sufficient liquidity necessary to sustain operations beyond June 30, 2021. These factors, among others, raise substantial doubt that the Company will be able to continue as a going concern. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.